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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MYONG HWA PARK, aka Myong Hwa  
Song,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 06-72345

Agency No. A21-290-488

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted July 1, 2008\*\*

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Myong Hwa Park, a native and citizen of South Korea, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's removal order. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review de novo questions of law, *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006), and we grant the petition for review and remand for further proceedings.

The BIA erred in concluding that Park is ineligible for § 212(c) relief under *United States v. Velasco-Medina*, 305 F.3d 839 (9th Cir. 2002). Although Park's conviction was not a deportable offense in 1989, we have held that *Velasco-Medina* does not apply to applicants convicted prior to the Antiterrorism and Effective Death Penalty Act of 1996. *See United States v. Leon-Paz*, 340 F.3d 1003, 1007 (9th Cir. 2003) (distinguishing *Velasco-Medina* because Leon-Paz "could rely on the fact that he had a source of protection should his crime be declared an aggravated felony in the future").

We do not consider the government's contention that Park is nevertheless ineligible for § 212(c) relief because her conviction followed a plea of not guilty, as this ground was not relied on by the BIA. *See Andia v. Ashcroft*, 359 F.3d 1181, 1185 (9th Cir. 2004) (per curiam) (declining to consider "arguments advanced by the INS which were not relied on by the BIA"). In light of our disposition, we need not address Park's equal protection claim.

**PETITION FOR REVIEW GRANTED; REMANDED.**